IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 8984 of 2007(T)

PETITIONER:

KUMMATTY VEETTIL KUNHIBI,D/O.AHAMMEDKOYA HAJI, AGED 66 YEARS,NAGARAM AMSOM DESOM,KOZHIKODE DISTRICT.

BY ADV. SRI. MOHAMMED NIAS C.P.

RESPONDENTS:
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1. **P.P. ALIKOYA, S/O. MAMMU, "ALIZ" MANSION, PANNIYANKARA AMSOM DESOM, KOZHIKODE.**
2. **K.P.FATHIMA,W/O.P.T.MAMMEDKOYA, AGED 36 YEARS,THEKKOTH,NAGARAM AMSOM DESOM, KOZHIKODE DISTRICT.**
3. **PUTHIYAMALIYEKKAL ANTHRU, S/O.KUNHAMMADKUTTY,NAGARAM AMSOM DESOM,KOZHIKODE TALUK.**

BY ADV. SRI.K.SANEESH KUMAR FOR R1.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.8984/2007-T:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PLAINT IN O.S. NO. 395/2000 ON THE FILE OF THE COURT OF THE PRINCIPAL MUNSIFF, KOZHIKODE-I.

EXT.P.2: COPY OF THE ORDER DTD. 20/02/2007 IN O.S. NO. 395/2000 PASSED BY THE COURT OF THE PRINCIPAL MUNSIFF, KOZHIKODE-I.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

M.N. KRISHNAN, J.

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W.P.C. NO. 8984 OF 2007

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Dated this the 30th day of October, 2007.

J U D G M E N T

This writ petition is filed challenging Ext.P2 order passed by the Principal Munsiff-I, Kozhikode. The suit originally filed was one for a preliminary injunction valued under Section 27(c) of the Court Fees Act. As per the contentions of the defendant the question of title had been raised and the plaint has been amended under Section 27(a) of the Court Fees Act. When the title dispute is involved under Section 27(a) the Court Fees Act contains a provision that the Court fee has to be paid for half of the market value of the property. For cases coming under Section 27(a) the mode of fixation is also contemplated under Section 7 of the Court Fees Act. If it is an agricultural land 10 times the gross profits minus the land revenue shall be the market value. If it is a building, as per the valuation shown in the assessment it has to be done under Section 7(3) and if it is not an agricultural land nor a building as per the amended

Court Fees Act, Section 7(3A) will apply where the market value of the property has to be fixed and Court fee be directed to be paid in accordance with law. So, the first thing to be found out is whether the plaint schedule property comes within the ambit of an agricultural land, or a building or a non- agricultural land attracting S.7(3A) of the Court Fees Act. When sufficient materials are not furnished before Court, the Court Fees Act itself enables the Court to appoint a Commissioner to conduct enquiry as contemplated under Section 19 of the Court Fees Act. In order to determine the issue before the Court, first the category of land has to be find out, then the market value has to be fixed and then a direction be given to the plaintiff to pay the Court fee in accordance with law. There are not very much relevant materials to find out classification or category of land and therefore I feel the Munsiff was not justified in arriving at a decision to pay the Court fee under Section 7(3A) at that stage. In order to enable the plaintiff to prove his case I set aside the order passed by the learned Munsiff and direct him

to issue a Commission to find out the category of land whether it comes under Section 7(2) or 7(3) or 7(3A) and also to find out the market value of the property. If there is any objection for either of the parties that also may be considered and appropriate orders may be passed in accordance with law. Parties are directed to appear before the Court below on 29.11.07.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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